

# CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

LAND USE COMMISSION  
STATE OF HAWAII

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2015 JAN 22 A 11: 15

## LETTER OF TRANSMITTAL

**To:** Daniel E. Orodener  
State of Hawaii Land Use Commission  
State Office Tower  
Leiopapa A Kamehameha Building  
235 South Beretania Street, Room 406  
Honolulu, Hawaii 96813

**DATE:** January 22, 2015

**RE:** Docket No. A87-610  
Kamehameha Schools (successor  
petitioner)

Mailed

Hand Delivered

### THE FOLLOWING ARE TRANSMITTED HEREWITH:

<u>COPIES</u>	<u>DATE</u>	<u>DESCRIPTION</u>
X	01/21/15	CERTIFIED COPY OF THE DECLARATION OF CONDITIONS IMPOSED BY THE STATE LAND USE COMMISSION, RECORDED AS DOC. A-54991338

For Your Information

For Review and Comment

For Your Files

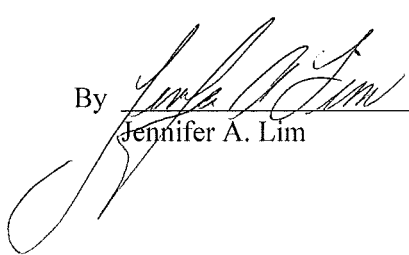
For Necessary Action

### REMARKS: Dear Mr. Orodener:

Successor Petitioner Kamehameha Schools hereby submits a recorded and certified **original** of the Declaration of Conditions Imposed by the State Land Use Commission, pursuant to HAR section 15-15-92, and as required under Condition 16 of the Commission's Decision & Order dated November 26, 2014 (as revised on December 1, 2014, with a replacement page 11)

Please feel free to contact me directly at (808) 523-2557, or my secretary Jeannie Hirabara at (808) 523-2683, if you have any questions or concerns.

By

  
Jennifer A. Lim

Enclosure

4824-0785-0017.1.030088-00121

I hereby certify that this is  
a true copy from the records  
of the Bureau of Conveyances,

as

*Nick DeThorne*

Registrar of Conveyances  
Assistant Registrar, Land Court  
State of Hawaii

Doc A - 54991338

January 21, 2015 3:29 PM

LAND COURT

REGULAR SYSTEM *RS ONLY*

Return By Mail  Pick-Up  To:

CARLSMITH BALL LLP  
ASB Tower, Suite 2100  
1001 Bishop Street  
Honolulu, Hawaii 96813

Attention: Jennifer A. Lim  
Telephone: (808) 523-2500

TITLE OF DOCUMENT:

DECLARATION OF CONDITIONS IMPOSED BY THE STATE LAND USE COMMISSION

PARTIES TO DOCUMENT:

SUCCESSOR PETITIONER: LANCE KEAWE WILHELM, ROBERT K.W.H. NOBRIGA,  
CORBETT AARON KAMOHAIKOKALANI KALAMA, MICAH A.  
KANE, AND JANEEN-ANN AHULANI OLDS, as TRUSTEES OF  
THE ESTATE OF BERNICE PAUAHI BISHOP, dba KAMEHAMEHA  
SCHOOLS

TAX MAP KEY(S): (1) 9-4-006:034 (por.), 035 (por.), 036, 037 (por.);  
(1) 9-6-004:024 (por.), 025, 026;  
(1) 9-6-005:001 (por.)  
Certificate of Title Nos.: 600,990; 600,991; 1,047,298

(This document consists of 12 pages.)

**DECLARATION OF CONDITIONS IMPOSED  
BY THE STATE LAND USE COMMISSION**

KNOW ALL MEN BY THESE PRESENTS:

Successor Petitioner LANCE KEAWE WILHELM, ROBERT K.W.H. NOBRIGA, CORBETT AARON KAMOHAIKIOKALANI KALAMA, MICAH A. KANE, and JANEEN-ANN AHULANI OLDS, as TRUSTEES OF THE ESTATE OF BERNICE PAUHI BISHOP, dba KAMEHAMEHA SCHOOLS ("KS"), in Docket A87-610 before the State of Hawai'i Land Use Commission ("**Commission**"), hereby submits this declaration for recordation pursuant to the requirements of Section 15-15-92, Hawai'i Administrative Rules.

WHEREAS, by Findings of Fact, Conclusions of Law, and Decision and Order dated May 17, 1988, in Docket No. A87-610, the Commission reclassified approximately 1,395 acres of land situate at Waiawa, 'Ewa, O'ahu, State of Hawai'i (the "**Petition Area**"), from the State Land Use Agricultural District to the State Land Use Urban District, as amended by Commission Order dated November 30, 1990 (the 1988 Decision and Order, as amended, shall hereinafter be referred to as the "**Waiawa Order**");

The original Petitioner under the Waiawa Order was Tom Gentry and Gentry Pacific, Ltd.;

The Petition Area is more fully described in that certain Declaration of Conditions Imposed by the Land Use Commission, filed on July 19, 1988, in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Land Court Document No. 1565292, and in the Bureau of Conveyances of the State of Hawai'i in Liber 22151 Page 250;

WHEREAS, KS, as Successor Petitioner, filed with the Commission a Motion for Order Amending the Waiawa Order on May 13, 2014, asking the Commission to (1) recognize KS, as the fee owner of the Petition Area, as the successor Petitioner to Tom Gentry and Gentry Pacific, Ltd.; and (2) issue an order modifying the Waiawa Order to expressly authorize the use of portions of the Petition Area for solar farm development for an interim period not to exceed 35 years; and

WHEREAS, the Commission granted KS' Motion for Order Amending the Waiawa

Order and issued that certain Order Granting Motion for Order Amending Findings of Fact, Conclusions of Law and Decision and Order Dated May 17, 1988, on November 26, 2014, as revised by the replacement of page 11 to said Order, which was issued by the Commission December 1, 2014 (collectively, the "**2014 Order**"), subject to 16 conditions, which are set forth on pages 60 through 65 of the 2014 Order; and

WHEREAS, pursuant to Section 205-4(g) of the Hawai'i Revised Statutes, and Sections 15-15-91 and 15-15-92 of the Hawaii Administrative Rules, such conditions are required to be recorded in the Bureau of Conveyances of the State of Hawai'i so as to be imposed upon the Petition Area as covenants running with the land, and shall be binding upon the Petitioner and each and every subsequent owner, lessee, sub-lessee, transferee, grantee, assignee, or developer of the Petition Area ; and

WHEREAS, pursuant to Section 205-4(g) of the Hawai'i Revised Statutes, and Section 15-15-92 of the Hawai'i Administrative Rules, Successor Petitioner filed a Notice of Imposition of Conditions by the Land Use Commission with the Bureau of Conveyances of the State of Hawai'i on December 9, 2014 as Document No. A-54560727;

NOW, THEREFORE, Successor Petitioner hereby states and declares that the 2014 Order amending the Waiawa Order to authorize the use of approximately 655 acres of land within the Petition Area, as approximately shown on **Exhibit A** attached hereto and incorporated herein by reference, for solar farm development to include all related utility and other infrastructure for a period not to exceed 35 years, is made subject to those 16 conditions which are more fully set forth on pages 60 through 65 of said 2014 Order, attached hereto and incorporated herein by reference as **Exhibit B**.

The conditions imposed by the 2014 Order shall be in addition to the conditions imposed under the Waiawa Order, which are hereby reaffirmed and shall continue in full force and effect.

Upon recordation at the Bureau of Conveyances, this Declaration of Conditions Imposed by the State Land Use Commission supersedes and automatically revokes the Notice of Imposition of Conditions by the Land Use Commission that was recorded with the Bureau of Conveyances of the State of Hawai'i on December 9, 2014 as Document No. A-54560727.

This instrument has been executed by or on behalf of the Trustees of the Estate of Bernice Pauahi Bishop in their fiduciary capacities as said Trustees, and not in their individual capacities. No personal liability or obligation under this instrument shall be imposed or assessed against said Trustees in their individual capacities.

**IN WITNESS WHEREOF**, the parties have executed these presents on the \_\_\_\_\_ day of JAN 20 2015, 2015.

TRUSTEES OF THE ESTATE OF BERNICE  
PAUahi BISHOP, as aforesaid

  
\_\_\_\_\_  
LANCE KEAWE WILHELM

  
\_\_\_\_\_  
JANEEN ANN AHULANI OLDS

  
\_\_\_\_\_  
CORBETT AARON KAMOHAIOKALANI KALAMA

Successor Petitioner

STATE OF HAWAI'I )  
 )  
CITY AND COUNTY OF HONOLULU ) ss.

On JAN 2 0 2015, before me appeared  
LANCE KEAWE WILHELM, JANEEN-ANN AHULANI OLDS, and  
~~CORBETT AARON KAMOHAIKIOKALANI KALAMA~~, as three of the Trustees of the Estate of Bernice Pauahi Bishop and  
not individually, to me known to be the persons described in the foregoing instrument and who  
did say that they executed the foregoing instrument as their free act and deed as such Trustees.

Signature:   
Name: MICHELLE M. FRIAS  
Notary Public, State of Hawaii  
My commission expires June 26, 2015  
Notary Public, State of Hawaii

W  
(Official Stamp or Seal)

My commission expires: \_\_\_\_\_

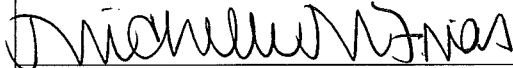
**NOTARY CERTIFICATION STATEMENT**

Document Identification or Description: Declaration of  
Conditions Imposed by the State Land Use Commission

Doc. Date: JAN 2 0 2015

No. of Pages: 12  
(including exhibits)

Jurisdiction: First Circuit

 JAN 2 0 2015  
Signature of Notary Date of Notarization and  
Certification Statement

MICHELLE M. FRIAS W  
Printed Name of Notary (Official Stamp or Seal)



O:\Oahu\KS WAIAWA\GIS\PROJECT\Phasing Plan 2014\_06.mxd

Property:

- (1) 9-4-006:034 (por.), 035 (por.), 036, 037 (por.);
- (1) 9-6-004:024 (por.), 025, 026;
- (1) 9-6-005:001 (por.)

Certificate of Title Nos.: 600,990; 600,991; 1,047,298 **Exhibit A**

IT IS FURTHER ORDERED that the use of the identified areas within the KS Property for a solar farm shall be subject to the following conditions:

1. Revised Master Plan. Petitioner shall submit to the Commission a revised master plan and schedule for development for the approximately 1,395-acre KS Property within five (5) years from the date of the Commission's issuance of an order approving the Motion to Amend.

2. Access to the Waiawa Correctional Facility. Petitioner shall cause the solar farm operator to ensure that the construction and installation of the solar farm within the KS Property shall not prevent roadway access to the Waiawa Correctional Facility.

3. Previously Unidentified Burials and Archaeological/Historic Sites. A supplemental AIS for the entire 1,395-acre Petition Area shall be prepared by a qualified archaeologist to determine potential impacts and to ensure that appropriate mitigation is implemented as needed. The supplemental AIS shall be submitted to the SHPD and accepted prior to the start of construction.

In the event that historic resources, including human skeletal remains, are identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the SHPD, O'ahu Island Section, shall be contacted immediately. Without any limitation to any



other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, paving, and walls not previously identified in studies referred to herein, are discovered during the course of construction of the solar farm project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigative measures have been implemented to its satisfaction.

4. Aircraft Hazard. If glint or glare from the photovoltaic array creates a hazardous condition for pilots, Petitioner shall cause the solar farm facility operator to be prepared to immediately mitigate the hazard upon notification by the DOT, Airports Division, or the FAA.

5. Traffic Impacts.

a. Phase 1. Prior to the start of construction of Phase 1 of the solar project, Petitioner shall cause the solar farm operator to address any comments that may be made by the DOT regarding the August 1, 2014, "Construction Traffic Assessment for the Proposed Waiawa Solar Farm" that was prepared for the solar farm project, and to implement the mitigations recommended in the Fehr & Peers Traffic Assessment.

Petitioner shall: (a) record with the Bureau of Conveyances a statement that the Petition Area is subject to conditions imposed herein by the Commission in the granting of the Motion to Amend; and (b) shall file a copy of such recorded statement with the Commission.

16. Recordation of Conditions. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to HAR section 15-15-92.

IT IS FURTHER ORDERED that the above conditions shall be in addition to the conditions imposed under the Waiawa Order, which are hereby reaffirmed and shall continue in full force and effect.

